

EDMUND G. BROWN JR., Attorney General
of the State of California
STEVEN V. ADLER
Supervising Deputy Attorney General
DOUGLAS LEE, State Bar No. 222806
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2580
Facsimile: (619) 645-2061

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

PAUL JOSEPH LOPEZ
6242 Warner Avenue, #27H
Huntington Beach, CA 92647

Respondent.

Case No. S-388

OAH No.

STATEMENT OF ISSUES

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.
2. On or about October 12, 2006, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a Respiratory Care Practitioner License from Paul Joseph Lopez (Respondent). On or about October 4, 2006, respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on August 16, 2007. On or about August 24, 2007, respondent requested a hearing to contest the denial of his application for licensure as a Respiratory Care Practitioner.

JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3732 of the Code states:

"(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.

"(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

7. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

"...."

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

"...."

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or

1 attempting to violate, directly or indirectly, or assisting in or abetting the violation
2 of, or conspiring to violate any provision or term of this chapter or of any provision
3 of Division 2 (commencing with Section 500).

4 “....”

5 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
6 substantially related to the qualifications, functions, or duties of a respiratory care
7 practitioner.

8 “....”

9 “(m) Denial, suspension, or revocation of any license to practice by another
10 agency, state, or territory of the United States for any act or omission that would
11 constitute grounds for the denial, suspension, or revocation of a license in this
12 state.

13 “....”

14 8. California Code of Regulations, title 16, section 1399.370, states:

15 “For the purposes of denial, suspension, or revocation of a license, a crime
16 or act shall be considered to be substantially related to the qualifications, functions
17 or duties of a respiratory care practitioner, if it evidences present or potential
18 unfitness of a licensee to perform the functions authorized by his or her license or
19 in a manner inconsistent with the public health, safety, or welfare. Such crimes or
20 acts shall include but not be limited to those involving the following:

21 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
22 abetting the violation of or conspiring to violate any provision or term of the Act.

23 “(b) Conviction of a crime involving fiscal dishonesty, theft, or larceny.

24 “....”

25 COST RECOVERY

26 9. Section 3753.5, subdivision (a), of the Code states:

27 "In any order issued in resolution of a disciplinary proceeding
28 before the board, the board or the administrative law judge may direct any

1 practitioner or applicant found to have committed a violation or violations
2 of law to pay to the board a sum not to exceed the costs of the investigation
3 and prosecution of the case."

4 10. Section 3753.7 of the Code states:

5 "For purposes of the Respiratory Care Practice Act, costs of prosecution
6 shall include attorney general or other prosecuting attorney fees, expert witness
7 fees, and other administrative, filing, and service fees."

8 11. Section 3753.1, subdivision (a), of the Code states:

9 "An administrative disciplinary decision imposing terms of probation may
10 include, among other things, a requirement that the licensee-probationer pay the
11 monetary costs associated with monitoring the probation. "

12 **FIRST CAUSE FOR DENIAL OF APPLICATION**

13 **(Conviction Of Crime)**

14 12. Respondent's application is subject to denial under sections 3732,
15 subdivision (b), 3750, subdivisions (d), (g), and (j), and California Code of Regulations,
16 Title 16, section 1399.370, subdivision (b) in that respondent was convicted of a crime
17 substantially related to the qualifications, functions, or duties of a respiratory care
18 practitioner. The circumstances are as follows:

19 (a) On or about February 14, 2005, the Los Angeles County District
20 Attorney filed a Felony Complaint in the case of *The People of the State of California v.*
21 *Paul Joseph Lopez*, before the Superior Court of California, County of Los Angeles, case
22 no. BA278090, charging respondent with the following:

- 23 (i) Counts 1 & 2 - Worker's Compensation Insurance Fraud [Ins. Code
24 § 1871.4, subd. (a)(1)];
- 25 (ii) Count 3 - Worker's Compensation Insurance Fraud
26 [Pen. Code § 550, subd. (a)(1)];
- 27 (iii) Count 4 - False Statements Regarding Aid
28 [Unemp. Ins. Code § 2101, subd. (a)(1)].

1 (b) On or about April 4, 2005, pursuant to a plea agreement, respondent
2 pled guilty to an amended Count 5, attempted grand theft of property in violation of Penal
3 Code sections 664 and 487, subdivision (a). The court ordered imposition of sentence
4 suspended and placed respondent on summary probation for 12 months, with various
5 terms and conditions. The remaining counts were dismissed.

6 **SECOND CAUSE FOR DENIAL OF APPLICATION**

7 **(Discipline By Another Agency)**

8 13. Respondent's application is subject to denial under sections 3732
9 and 3750, subdivision (m), in that on or about March 28, 2007, his State of California
10 Chiropractic License No. DC 26897 was disciplined in California Board of Chiropractic
11 Examiners Case No. 2006-549, based on his criminal conviction.

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters
14 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

15 1. Denying the application of PAUL JOSEPH LOPEZ for a
16 Respiratory Care Practitioner's License;

17 2. Directing PAUL JOSEPH LOPEZ to pay the Respiratory Care
18 Board of California the costs of the investigation and enforcement of this case, and if
19 placed on probation, the costs of probation monitoring; and

20 3. Taking such other and further action as deemed necessary and
21 proper.

22
23 DATED: October 11, 2007

24 Original signed by Liane Zimmerman for:
25 STEPHANIE NUNEZ
26 Executive Officer
27 Respiratory Care Board of California
28 Department of Consumer Affairs
State of California
Complainant